U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20612513

Date: APR. 5, 2022

Appeal of Vermont Service Center Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks "U-1" nonimmigrant classification under sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The Director of the Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that he was the victim of a qualifying crime. The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and a brief asserting that he was the victim of qualifying criminal activity and has established eligibility for U-1 nonimmigrant classification. The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for U-1 nonimmigrant classification, petitioners must show that they: have suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity; possess information concerning the qualifying criminal activity; and have been helpful, are being helpful, or are likely to be helpful to law enforcement authorities investigating or prosecuting the qualifying criminal activity. Section 101(a)(15)(U)(i) of the Act. The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

A "victim of qualifying criminal activity" is defined as an individual who has "suffered direct and proximate harm as a result of the commission of qualifying criminal activity." 8 C.F.R. § 214.14(a)(14). "Qualifying criminal activity" is "that involving one or more of" the 28 types of crimes listed at section 101(a)(15)(U)(iii) of the Act or "any similar activity in violation of Federal, State, or local criminal law." Section 101(a)(15)(U)(iii) of the Act; 8 C.F.R. § 214.14(a)(9). The term "'any similar activity' refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities" at section 101(a)(15)(U)(iii) of the Act. 8 C.F.R. § 214.14(a)(9).

As required initial evidence, petitioners must submit a Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), from a law enforcement official certifying the petitioners'

helpfulness in the investigation or prosecution of the qualifying criminal activity perpetrated against them.[1] Section 214(p)(1) of the Act; 8 C.F.R. § 214.14(c)(2)(i). U.S. Citizenship and Immigration Services (USCIS) has sole jurisdiction over U petitions. 8 C.F.R. § 214.14(c)(4). Although petitioners may submit any relevant, credible evidence for the agency to consider, USCIS determines, in its sole discretion, the credibility of and weight given to all the evidence, including the Supplement B. Section 214(p)(4) of the Act; 8 C.F.R. § 214.14(c)(4).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed his U petition in May 2016 with a Supplement B signed and certified by an inspector in the [redacted] Police Department in [redacted] Wisconsin (certifying official). The certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault," and "Other: Attempt Robbery." The certifying official cited to section 943.32(1)(a) (attempted robbery with force) of the Wisconsin Statutes Annotated (Wis. Code Ann.) as the specific statutory citation investigated or prosecuted. When asked to provide a description of the criminal activity being investigated or prosecuted, as well as any known or documented injury to the Petitioner, the certifying official indicated that the Petitioner :

> "was waiting at a bus stop when he was approached on foot by an unknown male who demanded money. The subject then punched him in the face, causing him to fall to the ground, and struck him numerous times about the head and face while searching [his] pockets. The suspect fled before obtaining anything."

The certifying official further indicated that the Petitioner suffered "[p]ain to the head, bleeding from the nose, swelling and redness to the face."

The police report accompanying the Supplement B identified the incident as a robbery by force, citing to section 943.32(1)(a) of the Wis. Code Ann. The narrative section of the police report indicates that police officers were dispatched to the scene and received information from the victim and a witness that an "[u]nknown actor intentionally and without consent demanded valuables from the victim, then punched and knocked victim to the ground, [striking] victim several times on the head/face as he [shuffled through] his pockets. Actor was not able to take anything before [fleeing] the scene." The police report further indicated that the perpetrator acted alone and that no weapons were used.

After reviewing the evidence in the record, the Director denied the U petition, concluding that the Petitioner did not establish, as required, that he was the victim of qualifying criminal activity. The Director noted that robbery is not a qualifying crime found within the statute or regulations and further determined that the Petitioner did not establish that the nature and elements of robbery under Wisconsin law are substantially similar to felonious assault or any other qualifying crime.

[1] The Supplement B also provides factual information concerning the criminal activity, such as the specific violation of law that was investigated or prosecuted, and gives the certifying agency the opportunity to describe the crime, the victim's helpfulness, and the victim's injuries.

On appeal, the Petitioner argues, through counsel, that the crime for which he was "a victim qualifies as 'felonious assault.'" He acknowledges that the state of Wisconsin does not penalize "assault" in its criminal code, but nonetheless asserts that robbery with force under section 943.32(1)(a) and battery involving substantial bodily harm under section 920.19(2) of the Wis. Code Ann., respectively, "are not meaningfully distinguishable from 'felonious assault.'"

B. The Petitioner Was Not the Victim of Qualifying Criminal Activity

1. Law Enforcement Did Not Detect, Investigate, or Prosecute a Qualifying Crime as Perpetrated Against the Petitioner

The Act requires U petitioners to demonstrate that they have "been helpful, [are] being helpful, or [are] likely to be helpful" to law enforcement authorities "investigating or prosecuting [qualifying] criminal activity," as certified on a Supplement B from a law enforcement official. Sections 101(a)(15)(U)(i)(III) and 214(p)(1) of the Act. The term "investigation or prosecution" of qualifying criminal activity includes "the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity." 8 C.F.R. § 214.14(a)(5). While qualifying criminal activity may occur during the commission of non-qualifying criminal activity, *see* Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status* (U Interim Rule), 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007), the qualifying criminal activity must actually be detected, investigated, or prosecuted by the certifying agency as perpetrated against the petitioner. Section 101(a)(15)(U)(i)(III) of the Act; *see also* 8 C.F.R. § 214.14(b)(3) (requiring helpfulness "to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based . . . .").

We acknowledge that in part 3.1 of the Supplement B, the certifying official checked boxes indicating that the Petitioner was the victim of criminal activity involving or similar to "Felonious Assault." However, a certifying official's completion of part 3.1 is not conclusory evidence that a petitioner is the victim of qualifying criminal activity. Part 3.1 of the Supplement B identifies the general categories of criminal activity to which the offense(s) in part 3.3 may relate. *See* 72 Fed. Reg. at 53018 (specifying that the statutory list of qualifying criminal activities represent general categories of crimes and not specific statutory violations). Here, the Supplement B, when read as a whole and in conjunction with other evidence in the record, does not establish that law enforcement actually detected, investigated, or prosecuted the qualifying crime of felonious assault against the Petitioner. *See* 8 C.F.R. § 214.14(c)(4) (stating that the burden "shall be on the petitioner to demonstrate eligibility" and that "USCIS will determine, in its sole discretion, the evidentiary value of [the] . . . submitted evidence, including the . . . Supplement B").

In part 3.3, the certifying official cited to robbery with force under section 943.32(1)(a) of the Wis. Code Ann. as the specific statutory citation investigated or prosecuted as perpetrated against the Petitioner, and did not cite to any provision involving assault under Wisconsin law. As noted above, the police report accompanying the Supplement B likewise identified the incident as an attempted robbery with force, citing to section 943.32(1)(a) of the Wis. Code Ann., and indicated that officers were dispatched to the scene in response to an attempted robbery. The remaining evidence in the record similarly does not reference any assault provisions under Wisconsin law or otherwise indicate

that these crimes were at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. Relatedly, and critically, the Petitioner himself acknowledges, through counsel in his brief on appeal, that Wisconsin's criminal code does not penalize the crimes of assault or felonious assault. In this case, the certifying agency could not have detected, investigated, or prosecuted felonious assault as perpetrated against the Petitioner, as the offense does not exist within its jurisdiction. *See* sections 101(a)(15)(U)(i)(III), (iii) of the Act (requiring that petitioners establish their helpfulness to law enforcement investigating or prosecuting qualifying criminal activity "in violation of Federal, State, or local criminal law"); 8 C.F.R. §§ 214.14(a)(2) (defining "certifying agency" to mean, in relevant part, a local law enforcement authority "that has responsibility for the investigation or prosecution of" the qualifying crime or criminal activity), (b)(3) (providing that petitioner must establish their helpfulness in the "investigation or prosecution of the qualifying criminal activity upon which [their] petition is based").

The Petitioner further appears to assert that law enforcement detected, investigated, or prosecuted, and he was the victim of, battery involving substantial bodily harm under section 920.19(2) of the Wis. Code Ann. based on the factual circumstances of the offense. He further asserts that, "[w]ithout requiring . . . Wisconsin to rewrite its criminal code," this crime should be viewed as the state equivalent of the qualifying crime of felonious assault. However, we need not address this assertion, as evidence describing what may appear to be, or hypothetically could have been charged as, a qualifying crime as a matter of fact is not sufficient to establish a petitioner's eligibility absent evidence that the certifying law enforcement agency in fact detected, investigated, or prosecuted the crime as perpetrated against the petitioner. Sections 101(a)(15)(U)(i)(III), (iii) of the Act; *see also* section 214(p)(1) of the Act (requiring certification from law enforcement establishing the petitioner's helpfulness "in the investigation or prosecution of" qualifying criminal activity"); 8 C.F.R. § 214.14(b)(3) (requiring helpfulness "to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based . . . ."). Borrowing from the analysis above, the Supplement B and incident report do not anywhere reference battery involving substantial bodily harm under section 920.19(2) of the Wis. Code Ann. or otherwise indicate that it was at any time detected, investigated, or prosecuted by law enforcement as perpetrated against the Petitioner. Instead, the evidence indicates that the only offense the certifying agency detected, investigated, and prosecuted as perpetrated against the Petitioner was robbery by force under section 943.32(1)(a) of the Wis. Stat. Ann.

Accordingly, the Petitioner has not met his burden of establishing, by a preponderance of the evidence, that law enforcement detected, investigated, or prosecuted felonious assault or any other qualifying crime as perpetrated against him; instead, law enforcement detected, investigated, or prosecuted as perpetrated against the Petitioner the crime of robbery with force under section 943.32(1)(a) of the Wis. Code Ann.

2. Robbery with Force Under Wisconsin Law is Not Substantially Similar to Felonious Assault

When a certified offense is not a qualifying criminal activity under section 101(a)(15)(U)(iii) of the Act, as here, petitioners must establish that the certified offense otherwise involves a qualifying criminal activity, or that the nature and elements of the certified offense are substantially similar to a qualifying criminal activity. Section 101(a)(15)(U)(iii) of the Act (providing that qualifying criminal

activity is "that involving one or more of" the 28 types of crimes listed at section 101(a)(15)(U)(iii) of the Act or "any similar activity in violation of Federal, State, or local criminal law"); 8 C.F.R. § 214.14(a)(9) (providing that the term "'any similar activity' refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities" at section 101(a)(15)(U)(iii) of the Act). Petitioners may meet this burden by comparing the offense certified as detected, investigated, or prosecuted as perpetrated against them with the federal, state, or local jurisdiction's statutory equivalent to the qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act. Mere overlap with, or commonalities between, the certified offense and the statutory equivalent is not sufficient to establish that the offense "involved," or was "substantially similar" to, a "qualifying crime or qualifying criminal activity" as listed in section 101(a)(15)(U)(iii) of the Act and defined at 8 C.F.R. § 214.14(a)(9).

The U nonimmigrant statutory and regulatory provisions indicate that, at a minimum, a "felonious assault" must involve an assault that is classified as a felony under the law of the jurisdiction where it occurred. *See* section 101(a)(15)(U)(iii) of the Act and 8 C.F.R. § 214.14(a)(9) (identifying "felonious assault" when committed "in violation of Federal, State or local criminal law" as a qualifying criminal activity); *see also* 8 C.F.R. § 214.14(a)(2), (c)(2)(i) (referencing the certifying agency's authority to investigate or prosecute the qualifying criminal activity perpetrated against a petitioner).

At the time of the offense against the Petitioner, section 943.32(1)(a) of the Wis. Stat. Ann. defined felony robbery by force as:

> Whoever, with intent to steal, takes property from the person or presence of the owner by either of the following means is guilty of a Class C felony: . . . By using force against the person of the owner with intent thereby to overcome his or her physical resistance or physical power of resistance to the taking or carrying away of the property[.]

Wis. Stat. Ann. § 943.32(1)(a) (West 2015).

Because the Wisconsin criminal code and related case law do not provide a definition for, or punish, "felonious assault," "aggravated assault," or any other equivalent crime, we compare felony robbery by force under Wisconsin law to the Model Penal Code (MPC) definition of aggravated assault.[2]

[2] Where the relevant jurisdiction lacks an offense equivalent to the qualifying criminal activity, as here, a petitioner may establish eligibility by demonstrating that the nature and elements of the certified offense are substantially similar to the qualifying criminal activity as defined in the MPC. The MPC was developed as a guideline to assist states in the revision and codification of their criminal codes, and aims to standardize state criminal law provisions and definitions. *See* MPC § 1.02 (providing, in part, that the "general purposes" of the provisions governing the definitions of, and sentencing for, offenses are "to give fair warning of the nature of conduct declared to constitute an offense[,]" to "differentiate on reasonable grounds between serious and minor offenses[,]" and to "define, coordinate, and harmonize the powers, duties and functions of the courts and of administrative officers and agencies responsible for dealing with offenders"); *see also Taylor v. United States*, 495 U.S. 575, 598 n.8 (1990) (directing, in the context of a federal sentence-enhancement statute, that a given offense's generic definition can be drawn from the "sense in which the term is . . . used in the criminal codes of most States" and that an offense's definition in the MPC can serve as an aid in doing so). Looking to the MPC in this context promotes consistent application of the U provisions of the Act across Federal, state, and local jurisdictions and is consistent with the agency's interpretation of the qualifying criminal activity at section 101(a)(15)(U)(iii) of the Act as "general categories of criminal activity." 72 Fed. Reg. at 53018.

The MPC defines and classifies both "simple assault" and "aggravated assault." MPC § 211.1. Simple assault is classified as a misdemeanor and aggravated assault is classified as a felony. *Id.* at §§ 211.1(1), (2). Individuals are guilty of aggravated assault if they:

> (a) attempt[] to cause serious bodily injury to another, or cause[] such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to value of human life; or . . .
>
> (b) attempt[] to cause or purposely or knowingly cause[] bodily injury to another with a deadly weapon.

MPC § 221.1(2) (Am. Law Inst. 2018).

The Petitioner has not met his burden of establishing that the nature and elements of robbery with force under section 943.32(1)(a) of the Wis. Stat. Ann. are substantially similar to the qualifying crime of felonious assault as defined by the MPC. Robbery with force in Wisconsin involves the taking of the personal property of another by force; it does not include, as an element, attempted or actual serious bodily injury or attempted or actual bodily injury with a deadly weapon. *Compare* Wis. Stat. Ann. § 943.32(1)(a) (punishing an individual who, "with intent to steal, takes property from the person or presence of the owner . . . [b]y using force"), *with* MPC § 211.1(2) (providing that an individual "is guilty of aggravated assault if he . . . attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly, or recklessly . . . or . . . attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon"); *see also Walton v. State*, 218 N.W.2d 309, 312-13 (Wis. Ct. App. 1974) (holding that "the degree of forced used" in committing robbery by force under section 943.32(1)(a) of the Wis. Stat. Ann. "is immaterial" and that "[a]ny struggle to obtain the property . . . is ordinarily regarded as sufficient to satisfy the requirement"). The Petitioner has not established that robbery with force under section 943.32(1)(a) of the Wis. Stat. Ann. involves or is similar to the statutorily enumerated qualifying crime of felonious assault.

C. The Remaining Eligibility Criteria for U-1 Classification

U-1 classification has four separate and distinct statutory eligibility criteria, each of which is dependent upon a showing that the petitioner is a victim of qualifying criminal activity. As the Petitioner has not established that he was the victim of qualifying criminal activity, he necessarily cannot satisfy the criteria at section 101(a)(15)(U)(i) of the Act.

ORDER: The appeal is dismissed.